

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

### REMARKS/ARGUMENTS

This reply is responsive to an Office Action mailed on December 28, 2005. Reconsideration and allowance of the application and presently pending claims 1-18 are respectfully requested.

#### Present Status of the Patent Application

Claims 1-18 remain pending in the present application. Claims 1-18 have been rejected. Claims 1, 2, 7, 8, and 12-14 have been amended.

#### Response to Claim Rejections Under 35 U.S.C. §103

Claims 1-18 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable over Howington (U.S. Patent Application Pub. No. 2002/0152120) in view of Flickner et al. (US Patent Application Pub. No. 2003/0107649). Applicant respectfully traverses this rejection.

#### *Independent Claim 1*

Independent claim 1, as amended, is allowable for at least the reason that Howington and Flickner, in combination or alone, do not disclose, teach, or suggest "locating monitoring equipment in each of a plurality of zones covering substantially the entire facility," "continually monitoring movement of the guests over time within the entire facility as they pass through the zones," "determining at any time locations within the entire facility of all members of a group," "displaying the locations of all members of the group to any of the members of the group,...at least two of the positions of the members being widely disbursed throughout the entire facility," "creating reports on the demographics and continuous movements of the guests as they move about the entire facility," "determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

entire facility" or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the entire facility."

In the Office Action, it is acknowledged that Howington fails to teach or fairly suggest continuous monitoring, but it is stated that Howington allegedly teaches "monitoring movement of the guests over time within the entire facility as they pass through the zones" and "creating reports on the demographics and movements of the guests as they move about the entire facility."

In this regard, and with reference to the teaching of the Howington patent, the Office Action has cited paragraphs [0022] and [0036]:

[0022] ... Patron information includes a wide variety of data including **tracking patrons throughout the casino and any attached resort attractions**, tracking gaming, credit restaurant, recreational and retail transactions...

[0036] [As mentioned earlier, many casinos also employ data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron and] associated personal information, **the patron's location within the casino**, that patron's wagering characteristics, that patron's affiliation with other groups or patrons, promotional items or comps related to the patron, and that patron's other activities related to arriving at, enjoying and departing from the casino. Embodiments of the present invention contemplate sharing of the patron related information with the machine management database information described earlier. The sharing of this information allows scores for and evaluation of games and players. Game and player-related relationships may also be compared on any basis such as game type, denomination, location, group, **age, sex, status, and club level**. ...

(**Emphasis added by the Examiner.** [ ] added for the response.)

As can be verified from a review of these cited portions of Howington, there is no teaching or disclosure of "monitoring movement of the guests over time within the entire facility." Howington merely discloses at paragraph [0036] "data gathering

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

techniques (e.g., magnetic swipe cards at each machine) for identifying a patron ..., the patron's location within the casino ...” Using this system, the **only** time the location of the patron is known occurs when the patron uses their card at a gaming machine, casino attraction, restaurant, or for any other transaction. The movements taken by the patron when moving from a first known location to a second known location is **not** identified by the Howington system. Locations visited by the patron that do not involve the use of this card are **not** identified, or for that matter, any location between machines where the patron's card is swiped. The current location of the patron is only as good as his most recent use of his card, which may be currently, minutes ago, or even hours ago. Furthermore, Howington makes no suggestion or teaching of associating any time with the activities of the patrons, such as time stamping. Howington is merely concerned with which activities the patron participated in, not when the patron participated in them or where the patron traveled between the machines where a card swipe took place. Therefore, Howington does not disclose “monitoring movement of the guests over time within the entire facility as they pass through the zones”.

As can be further verified from a review of these cited portions of Howington, there is no teaching or disclosure of “creating reports on the demographics and movements of the guests as they move about the entire facility.” Howington merely discloses the use of magnetic swipe cards or the like for identifying a patron at a particular location, such as a gaming machine, casino attraction, restaurant, or other location where they might make a transaction with their card. This information, at best, could provide reports showing a listing of the locations the patron visited using their card, but would **not** be able to show the actual movement of the patron between these locations or any locations they visited without using their card. For instance, a guest merely observing the other players and not making any transactions with their card could not be determined by the Howington method. Howington does not teach, nor suggest “continuous movements of the guest ... about the entire facility”. Howington's

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

principal concern appears to be creating reports showing the location of their gaming machines (see Figs. 10-12) and the extent of their performance, not the movements or even location of their guests. Therefore, Howington does not disclose "creating reports on the demographics and movements of the guests as they move about the entire facility."

As can be still further verified by a review of Howington, there is no teaching or disclosure of "locating monitoring equipment in each of a plurality of zones covering substantially the entire facility," "determining at any time locations within the entire facility of all members of a group," or "displaying the locations of all members of the group to any of the members of the group, ...at least two of the locations of the members being widely disbursed throughout the entire facility." Howington does not disclose monitoring equipment in zones covering substantially the entire facility, but merely includes card swipe readers on the gaming machines or at other activities requiring a cash transaction. Locations within the casino not requiring a cash transaction are never monitored by the system of Howington, since Howington is only concerned about the level of performance or use of the machines. Furthermore, the only time Howington can determine the location of its patrons is at the exact time when they swipe their card and when they are playing on one of the gaming machines after swiping their card. For example, if a group of the casino's patrons have lunch at one of the casino's restaurants and one person in the group pays for the entire group, Howington can only determine that the person paying was in the restaurant and can not determine the location of any other member of the group or even how long any of the people have been in the restaurant. Lastly, Howington merely discloses displaying the locations of their gaming machines and their productivity. Howington does not teach or suggest displaying locations of its patrons to other patrons. Therefore, Howington does not disclose "locating monitoring equipment in each of a plurality of zones covering substantially the entire facility," "determining at any time locations within the entire

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

facility of all members of a group," or "displaying the locations of all members of the group to any of the members of the group, ...at least two of the locations of the members being widely disbursed throughout the entire facility."

As can be still further verified by a review of Howington, there is no teaching or disclosure of "determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the entire facility" or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the entire facility." In fact, Howington is incapable of "determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the entire facility" since Howington does not track continuous movements as acknowledged by the Examiner. The lack of tracking makes "analyzing the traffic patterns ... within the entire facility" impossible. Howington provides no teaching or suggestion that traffic patterns of the guests are of any importance. Therefore, Howington does not disclose "determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the entire facility" or "analyzing the traffic patterns of the guests to determine timing and location of amenities within the entire facility."

Accordingly, the rejection is deficient in these areas. Notwithstanding, the undersigned has reviewed the entirety of the Howington patent and has failed to identify any such teachings anywhere within this reference. Accordingly, the Howington patent fails to teach or disclose the elements of claim 1 as referenced by the Examiner (excluding the "continually" and "continuous" references), and the rejection of claim 1 should be withdrawn.

The Office Action combines Flickner with Howington to allegedly teach the continuous monitoring aspect. However, Applicant submits that Flickner does not teach

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

the continuous monitoring aspect of tracking guests through zones covering substantially the entire facility, and that the combination of these two references is improper. The Examiner must establish some suggestion or motivation to modify or combine the documents and establish that a reasonable expectation of success. (MPEP 2143)

Regarding the teaching of the Flickner patent, the Office Action states that Flickner teaches using multiple overlapping cameras to cover an area. This area is defined in the Office Action "as the area of camera coverage." Flickner does **not** disclose, teach, or suggest this "camera coverage" as "covering substantially the entire facility." In fact Flickner appears to teach away from "substantially covering the entire facility" by stating that "[t]he system can be used, for example, to track people as they wait in a checkout line or at a service counter." (Abstract) The Flickner system is merely used in specific areas having lines or queues to distinguish between the number of groups and the number of individuals in the line to determine if action should be taken to reduce the wait time. Clearly, the Flickner system contains no teaching or suggestion of "covering substantially the entire facility."

The continuous monitoring aspect of Flickner does **not** solve the deficiency of Howington. In Howington the only time the location of a specific patron is known is when the patron swipes their card. The location of the patron and the route traveled by the patron between card swipes is unknown, i.e., no continuous monitoring. Similarly in Flickner, individuals are only tracked when they are within the camera coverage area around a checkout line or service counter, and their position is never known when they are outside of the camera coverage area. Additionally, in Flickner "appearance models" are used to track individuals. This appearance model does not personal identify a specific patron, but merely provides a mathematical representation of the image of an individual to allow tracking of the individual within the desired area, i.e., a checkout line

App. No. 10/716,891  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

or a customer service counter. Without knowing the personal identity of the person being tracked, the location of the patron and the route traveled by the patron between card swipes would remain unknown. Therefore, Flickner does **not** resolve the continuously monitoring deficiency of Howington.

Flickner does not resolve any of the other deficiencies of Howington. Flickner only discloses determining groups and individuals within the desired areas (checkout lines and service counters), **not** "determining at any time locations within the entire facility of all members of a group." The Flickner system merely displays individuals with the desired areas, **not** "displaying the locations of all members of the group to any of the members of the group, ...at least two of the positions of the members being widely disbursed throughout the facility." The positions of individuals outside the desired areas are unknown in the Flickner system. Also, Flickner merely discloses observing traffic patterns, queue lengths, and waiting times within the desired areas, **not** "determining common traffic patterns of the guests anywhere throughout the entire facility at any time based on the continuous movements of the guests." Lastly, Flickner does not disclose or suggest "creating reports on the demographics and movements of the guests as they move about the entire facility." Since Flickner does not identify the individuals or monitor the entire store, it would be impossible for Flickner to report on the demographics or movements of the individual.

Regarding the suggestion or motivation to combine the references, the Office Action states the following: "detailed and continuous data on a patron's movements in the setting Howington envisions could clearly be mined to further Howington's stated goals of improving customer service and targeted marketing." This statement provides no insight into how the "teachings" of Flickner could be somehow combined with the "teachings" of Howington, only with the "setting" of Howington. Merely stating that something would be useful in the Howington environment does not show any specific

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

suggestion or motivation from Howington. It is, of course, not permissible to use hindsight, after a review of Applicant's disclosure, to provide the missing motivation or suggestion to combine. Howington merely suggests using the described transactional data for this purpose and does not suggest using any other data for this purpose. "Improving customer service and targeted marketing" is a broad statement that could encompass many things, but does not provide the suggestion or motivation to add to the Howington system data concerning continuous movement of the patron through zones of a facility, for combining the teachings of Howington and Flickner.

There is no motivation to combine the Howington and Flickner references for the following reasons: 1) Howington contains no suggestion or motivation to continuously monitor the movement of a person through zones of a facility, Howington is merely concerned with the spending habits of the person and Flickner is merely concerned with determining shopping groups to reduce waiting times by tracking individuals' movements in a desired checkout area of a cash register; 2) the Flickner system does not provide personal identification of individuals, while the system of Howington requires personal identification to accumulate patron information; 3) the Howington system could not reasonably be modified to include the Flickner system, the Flickner system would have to be used in addition to the Howington system; and 4) the Flickner method was designed to identify groups of shoppers at a checkout line or a service counter, nothing in Howington suggests any desire to identify the location of groups of gamblers or patrons of the casino as they move throughout the casino.

Regarding the reasonable expectation of success, the Office Action makes no specific remarks. Applicant submits that there is not a reasonable expectation of success for the following reasons: 1) the Flickner system is incapable of personally identifying the patrons of the casino, the Howington system would require the identity of the patron to record any additional information revealed by the Flickner system to the



App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

patron's database; 2) the Flickner system merely identifies groups of shoppers at a checkout line or a service counter, to know when to open an additional checkout line, Howington does not disclose or suggest the opening of additional cashout registers or any other services due to the number of people waiting; and 3) patrons of a casino may come to the casino in a group and may even gamble in a group, but Howington does not suggest any desire or reason for identifying groups of people gambling together.

Thus, there is simply no motivation to combine, nor even a suggestion of one. Also, even if the Howington system were somehow made to employ the Flickner arrangement, the result would not be satisfactory (no personal identification of patrons, no suggestion or reason for identifying groups of gamblers, and no suggestion or reason for knowing the length of a line in a casino). Therefore, it was not proper to combine the Howington patent and the Flickner patent.

In summary, neither Howington nor Flickner discloses the continuously monitoring/locating function of the present application throughout the entire facility. Howington can not monitor continuously the movements of their patrons and can not monitor the entire casino, since only the gaming machines and other activities requiring a cash transaction are equipped with card swipe capabilities leaving other areas of the casino unmonitored. Flickner never personally identifies the individuals being monitored and only monitors areas around the checkout lines and the customer service counter, so individuals outside these areas are also unmonitored. Also, neither Howington nor Flickner discloses determining traffic patterns anywhere throughout the entire facility. Howington is incapable of determining traffic patterns, since the Howington system does not continuously monitor movement of its patrons. Flickner is only able to determine traffic patterns in its limited areas of camera coverage around the checkout lines and the customer service counter, traffic patterns in other areas of the store can not be determined.

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

The Howington patent does not disclose, teach, or suggest independent claim 1, as acknowledged by the Examiner. The Howington patent and the Flickner patent cannot be properly combined. Even if the Howington patent and the Flickner patent are combined, the Flickner patent does not resolve the deficiency identified by the Examiner of the Howington patent. For at least the above reasons, the rejection of claim 1 should be withdrawn.

Neither Howington, nor Flickner, disclose, nor suggest, "determining at any time locations within the entire facility of all members of a group." Instead, they both are concerned only about the location of machines in a casino, or a queue of people at a checkout cash register. No information is monitored anywhere else. Thus, at any given time, neither Howington, nor Flickner, can determine the location of all members of the group, because some or all of the members may be in a different part of the facility which does not have a machine, such as a restroom, or other area where no machine is present.

Also, neither reference suggests "displaying the locations of all members of the group to any of the members of the group" where the "locations of the members being widely dispersed throughout the entire facility." They are simply not concerned with locating the members of the group wherever they may be within the facility at any given time.

In summary, neither reference, nor the combination of the two, disclose "determining guest common traffic patterns anywhere throughout the entire facility at any time." Flickner only is concerned about traffic patterns at the checkout lane, and no place else in the store.

Also, neither reference suggests locating all of the members of a group, even when widely dispersed throughout the facility. Howington is only concerned about

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

those people who use the machines in the casino, and Flickner is only concerned with the number of users in the checkout lane, and is not concerned about locating specific people in the facility.

*Independent Claim 7*

Independent claim 7, as amended, is allowable for at least the reason that Howington and Flickner do not disclose, teach, or suggest "means for locating monitoring equipment in each of a plurality of zones covering substantially the entire facility," "means for continually monitoring movement of the guests over time within the entire facility as they pass through the zones," "means for determining at any time locations within the entire facility of all members of a group," "means for displaying the locations of all members of the group to any of the members of the group,...at least two of the positions of the members being widely disbursed throughout the entire facility," "means for creating reports on the demographics and continuous movements of the guests as they move about the entire facility," "means for determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the entire facility," or "means for analyzing the traffic patterns of the guests to determine timing and location of amenities within the entire facility" as described above regarding claim 1. Accordingly, the Howington and Flickner patents fail to teach or disclose the invention as defined by claim 7, and the rejection of claim 7 should be withdrawn.

*Independent Claim 13*

Independent claim 13, as amended, is allowable for at least the reason that Howington and Flickner do not disclose, teach, or suggest a "module for locating monitoring equipment in each of a plurality of zones covering substantially the entire facility," a "module for continually monitoring movement of the guests over time within

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

the entire facility as they pass through the zones," a "module for determining at any time locations within the entire facility of all members of a group," a "module for displaying the locations of all members of the group to any of the members of the group,...at least two of the positions of the members being widely disbursed throughout the entire facility," a "module for creating reports on the demographics and continuous movements of the guests as they move about the entire facility," a "module for determining guest common traffic patterns anywhere throughout the entire facility at any time based on the continuous movements of the guests throughout the entire facility," or a "module for analyzing the traffic patterns of the guests to determine timing and location of amenities within the entire facility" as described above regarding claim 1. Accordingly, the Howington and Flickner patents fail to teach or disclose the invention as defined by claim 13, and the rejection of claim 13 should be withdrawn.

#### *Dependent Claims*

Dependent claims 2-6, 8-12, and 14-18 are believed to be allowable for at least the reason that these claims depend from allowable independent claims 1, 7, and 13, respectively. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

#### **CONCLUSION**

The other cited art of record has been reviewed, and it is believed that the claims, as amended, patentably distinguish thereof.

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot, and/or accommodated, and that now pending claims 1-18 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. Upon receipt of this reply, the undersigned would like to schedule an interview with the Examiner to

App. No. 10/716,691  
Amdt. Dated March 28, 2005  
Reply to Office Action of December 28, 2005  
Atty. Dkt. No. 8591-112

discuss this matter at your earliest convenience. If you have any questions, please feel free to call the undersigned at 619-231-3666.

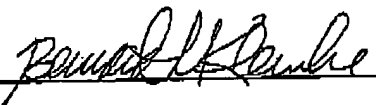
Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date: March 28, 2006

DUCKOR SPRADLING METZGER & WYNNE  
A Law Corporation  
401 West A Street, Suite 2400  
San Diego, California 92101-7915

Telephone No.: 619.231.3666  
Facsimile No.: 619.231.6629  
Email Address: [kleinke@dsmwlaw.com](mailto:kleinke@dsmwlaw.com)

By: 

Bernard L. Kleinke  
Attorney for Applicant  
Registration No. 22,123